
(1985) 11 MP CK 0032
In the Madhya Pradesh High Court

The Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Madan and Others	RESPONDENT

Date of Decision : 25-11-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1986) 1 ACC 429

Hon'ble Judges : R.K. Vijayvargiya, J

Bench : Single Bench

Judgement

R.K. Vijayvargiya, J.—This order shall also dispose of Misc. Appeal Nos. 205 of 1982 The Oriental Fire Co. v. Nasruddin and Ors. 206 of 1982 The Oriental Fire Co. v. Sardar and Ors. 182 of 1982 Nasruddin v. Rameshwar and Ors. 213 of 1982 Parvatibai and Anr. v. Madan and Ors. and 216 of 1982 (Parvatibai and Anr. v. Sardar and Ors.) as all these appeals are directed against the award dated 30-4-1982 passed by the Member, Motor Accidents Claims Tribunal, Dhar in Claim Cases Nos. 2 of 1981, 4 of 1981 and 5 of 1981.

2. The material facts giving rise to these appeals are as follows : Tractor trolley No. C.P.F. 8956 belonged to Parvatibai at the relevant time. It was being driven at the time of the accident by Rameshwar Patidar son of Parvatibai. Kaliya and Sumaria who were labourers engaged by Rameshwar were travelling in the said trolley. The appellant Nasruddin was also travelling in the trolley. In the trolley some bricks were being transported in the trolley. The tractor was proceeding from Naichha towards Mandu. On the way it turned turtle. In the accident Kalia and Sumaria died. Nasruddin sustained injuries in the accident. Madan father of Kalia and Sardar father Sumariya and Nasruddin filed applications u/s 110-A of the Motor Vehicles Act claiming compensation for the deaths of Kalia and Sumariya and for the injuries sustained by Nasruddin. According to the claimants the accident was caused on account of the negligence of the driver in the course of his employment with Parvatibai.

3. The claims filed by Madan, Sardar and Nasruddin were respectively registered

as claim cases Nos. 4, 5 and 2 of 1981. The claims were contested by the owner and the Insurance Company. The Tribunal held that the accident was caused on account of the rashness and negligence of the driver of the tractor in the course of his agency and the owner, driver and the insurance company were liable to pay compensation to the claimants. The Tribunal awarded Rs. 13,770/-, Rs. 15,870/- and Rs. 3,110/- as compensation to Madan, Sardar and Nasruddin respectively.

4. Aggrieved by the award of the Tribunal in claim case No. 4 of 1981 the Insurance Company and the owner Parvatibai preferred appeals which are registered as M.A. Nos. 204 and 213 of 1982, respectively. Aggrieved by the award of the Tribunal in claim case No. 5 of 1981 the Insurance Company and the owner preferred appeals which are registered as M.A. Nos. 206 of 1982 and 216 of 1982. Aggrieved by the award in claim case No. 2 of 1981 the insurance company and the claimant preferred appeals which are registered as M.A. Nos. 205 of 1982 and 182 of 1983, respectively.

5. All the appeals were heard together.

6. The learned counsel for the owner Parvatibai contended that the Tribunal committed an error in holding that the accident was caused on account of the rashness and negligence of the driver of the tractor.

7. This contention has no force. From the evidence led by the claimants it is proved that the tractor was being driven rashly and that the trolley turned turtle. The driver of the tractor was not examined. It was for the driver to show as to what was the reason of the accident. In the circumstances it cannot be held that the Tribunal committed an error in holding that the accident was caused on account of the rashness and negligence of the driver of the tractor in driving it.

8. The learned counsel for the owner did not assail the quantum of compensation awarded by the Tribunal at the hearing of the appeals. Misc. Appeals Nos. 213 of 1982 and 216 of 1982 preferred by the owner and are therefore dismissed.

9. The learned counsel for the Insurance Company contended that the Tribunal committed an error in holding the Insurance Company liable for the compensation to the claimants. According to him the risk was not covered by the insurance policy and therefore the insurance company was not liable.

10. The contention of the learned counsel for the appellant cannot be accepted. The policy of insurance has not been produced. The learned counsel placed reliance upon the certificate of insurance and led stress on the endorsement on that certificate restricting the use of the vehicle for agricultural and forestry purpose and that the use of the vehicle for carriage of passengers for hire or reward was not covered by the policy. The certificate of insurance cannot take place of insurance policy. What were the terms of the policy have not been brought on record. The endorsement on the certificate of insurance also cannot help the insurance company.

11. It has emerged in evidence that the tractor was going to Mandu to bring timber from that place. While going to Mandu it was loaded with bricks and the deceased labourers and Nasruddin were also travelling in the trolley. There is no evidence that the labourers and Nasruddin were travelling as passengers for hire or reward. The purpose for which the tractor was going to Mandu was forestry because timber from the forest was to be transported from Mandu.

12. It is not necessary to consider the matter further because the policy of insurance which would have thrown light on the matter has not been produced. The learned counsel for the appellant placed reliance upon the decisions in *Sakkubai v. Baideosingh* 1983 MPLJ S . No. 40, *Mahila Phoolvati and Others Vs. Girdharilal and Others*, , *Amar Singh Vs. Surajmal and Others*, and *South India Insurance Co. Ltd. Vs. Heerabai and Others*,

13. All these decisions are distinguishable on facts. In those cases the insurance policy was produced on record. These cases therefore do not help the insurance company. The appeals Nos. 204, 205 and 206 of 1982 preferred by the insurance company therefore fail and are dismissed.

14. The claimant Nasruddin has preferred appeal praying for enhancement of the amount awarded to him as compensation. The Tribunal awarded Rs. 2,550/- as damages for pain and suffering, Rs. 360/- for loss of income for 24 days and Rs. 250/- as expenses of medicines and treatment.

15. From the testimony of Dr. Mandlik (PW 4) and Dr. Vyas (PW 5) it does not appear that Nasruddin suffered any serious injury in the accident. There was only one fracture on his humerus. It also does not appear on record that Nasruddin had to be put in plaster.

16. Considering the facts of the present case it cannot be held that the amount of compensation awarded by the Tribunal is too low requiring interference in appeal,

17. The appeal preferred by the claimant Nasruddin therefore fails and is dismissed.

18. As a result of the discussion aforesaid all these appeals fail and are dismissed. The parties shall bear their own costs of these appeals.